APPENDICES

Appendix A: Petition of Suit

Arbitrazh Court of Samara Oblast
443045 Samara, ul. Avrora, 148

Plaintiff: OAO Stockholders Commercial Bank "TOKOBANK" in the person of its Samara Branch
[address]

Respondent: ZAO "Ekvator"
[address]

Sum of the suit: 3570000 rubles
State [filing] fee: 29450 rubles

PETITION OF SUIT
Concerning the Return of Indebtedness

Between the Plaintiff and the Respondent on 11 April 1997 there was concluded Credit Contract No. 32/97 (hereinafter — the credit contract), in accordance with which the Respondent was provided credit in the amount of 1000000 (one million) new rubles for the period until 15/07/97. By the additional agreement No. 4 of 15/07/97, the period for the payment of the credit was established as 15/12/97.

In accordance with point 3.3. of the credit contract, the Respondent was obligated pay to the Plaintiff for the use of the credit 45% per year from the date of the creation of the debt until 14/07/97, providing for the deposit of the sum of the payment due to the account of the Plaintiff not later than the 25th of each month. Later the percentage rate on the credit contract was changed by additional agreements in the following manner:

Date of add. Agreement	% yearly	Date of change in rate
No. 1 of 15/05/97	39	15/05/97
No. 2 of 23/06/97	27	16/06/97
No. 9 of 16/10/97	24	06/10/97
No. 11 of 21/11/97	31	22/11/97

By an additional agreement of 26/12/97, the sum of the credit was increased to 3000000 (three million) rubles and the date for payment established as 25/12/98, and the procedure for the provision of the credit was changed as well: The provision of the credit was to be carried out at any time and n any amount by means of an additional agreement or the payment of a payment order.

In accordance with this, on the basis of an additional agreement No. 14 of 26/12/97, the Respondent was provided with a veksel credit in the sum of 3000000 rubles with a time for payment of 15/10/98. The percentage for the use of the credit was defined as 10% yearly until the payment by the bank of the veksels, and thereafter 31% yearly. The percentage for use of the credit was established by agreement of 01/02/98 in the amount of 34% yearly, by additional agreement No. 16 of 23/03/98 as 36% yearly from 01/03/98. By additional agreement No. 17 of 23/03/98 the percentage rate for the credit was reduced to 30%, beginning with 16/03/98.

By additional agreement No. 18 of 25/05/98 the time for the payment of the interest for the period of 01/05/98 through 25/12/98 was established as being simultaneously with the payment of the credit.

In security for the execution of its obligations under the credit contract, on 11/04/97 the Respondent provided a mortgage on immovable property belonging to it: a part of the non-residential premises being built at ul. Aerodromnaya, d. 13, in the city of Samara, with an overall space of 1046 square meters.

In accordance with Article 339 of the Civil Code of the RF, the contract of mortgage was certified on 15/04/97 by a notary, G.V. Vantenkova (register No. 776) in the city of Samara, and on 18/04/97 was registered in the bodies of state registration of the municipal enterprise “Bureau of Technical Inventory” (register No. 4).

In violation of the conditions of the credit contract (with all of the additional agreements to it), the Respondent has not fulfilled its obligations to this time and did not provide for the receipt of assets in payment for its underlying debt and the interests for its use.

As a result of the violation by the Respondent of its obligations, there has been formed an indebtedness of the Respondent to the Plaintiff, which on 25 December 1998 consisted of 3570000 rubles, of which:

3000000 (three million) rubles is the amount of the basic debt
570000 (five hundred and seventy thousand) rubles is the amount of the interest debt

In accordance with point 4.1 of the credit contract, the Plaintiff has the right to withdraw in an uncontested procedure [automatically] from the account of the Respondent monetary sums for the payment of the basic debt and interest on it. Payment instructions Nos 1 and 2 of 29/12/98 for the withdrawal of the sums of the debts from the settlement account of the Respondent were not executed due to the lack of funds in the settlement account.

On the basis of that set forth above, in accordance with Articles 334, 349 and 810 of the Civil Code of the RF, and being guided by Articles 4 and 22 of the APC RF,

I REQUEST:

That 3570000 (three million five hundred seventy thousand) rubles be exacted from the Respondent to the benefit of the Plaintiff, of which

3000000 (three million) rubles is the sum of the underlying debt and
570000 (five hundred seventy thousand) rubles is the sum of the indebtedness for interest.

That execution be levied on the mortgaged immovable property belonging to the Respondent.

That the court costs for the payment of the state [filing] fee be imposed upon the Respondent.

Attachments:

1 Evidence of the sending of a copy of the petition of suit to the Respondent.
2 Motions (for delay in the payment of the state fee and for security for the claims of the suit)
3 An account of the sums of indebtedness of ZAO “Ekvator”
4 A copy of Credit contract No. 32/97
5 “ “ “ Additional agreement No. 1 of 15/05/97
6 “ “ “ Additional agreement No. 2 of 23/06/97
7 “ “ “ Additional agreement No. 4 of 15/07/97
8 “ “ “ Additional agreement No. 9 of 16/10/97
9 “ “ “ Additional agreement No. 11 of 21/11/97
10 “ “ “ Additional agreement without number of 26/12/97
11 “ “ “ Additional agreement No. 14 of 26/12/97
12 “ “ “ Additional agreement No. 15 of 02/02/98
13 “ “ “ Additional agreement No. 16 of 23/03/98
14 “ “ “ Additional agreement No. 17 of 23/03/98
15 “ “ “ Additional agreement No. 18 of 25/05/98
16 “ “ “ Mortgage contract of 11/04/97
17 “ “ “ Conclusion of the Bureau of Technical Inventory on the market value of the immovable property on 19/02/97
18 “ “ “ Additional agreement of 26/12/97 to the mortgage contract
19 “ “ “ Payment instruction No. 1 of 29/12/98
20 “ “ “ Payment instruction No. 2 of 29/12/98
21 “ “ “ Power of attorney No. 44 of 14/01/99

For AKB “TOKOBANK”
Acting Director of the Samara Branch Office T.N. Rezanova
By Power of Attorney of 14/01/99, No. 44

[signature]

Appendix B: Determination on Acceptance of a Case and Preparation

Determination on the Acceptance of a Case for Proceedings and its Preparation for Court Consideration

City of Chelyabinsk

__26 April 1999__ **Case No.** __A76-3051/99-39-102___

Judge of the Arbitrazh Court of Chelyabinsk Oblast __Alginova, S.I._____,
having considered the materials of the case concerning the suit of _OAO Kombinat Magnezit" of the city of Satka_____

against ___the State Tax Inspectorate for the city of Satka_____
_____

concerning ____the recognition as void of decision No. 75 of the State Tax Inspectorate of 23 March 1999_____
_____

HAS ESTABLISHED:

The petition was submitted taking account of the proper venue and with observance of the requirements of Articles 102-104 of the Arbitrazh Procedure Code of the Russian Federation.

Bearing in mind the sufficiency of the basis for the acceptance of the petition of suit and the consideration of the dispute in a court session, as well as the necessity to take actions directed toward provision for the correct and timely consideration of the dispute, and being guided by Articles 106, 112, 113 and 140 of the Arbitrazh Procedure Code of the Russian Federation [the judge]

HAS DETERMINED:

1. To accept the petition of suit for proceedings and to appoint the case for consideration in a session, which will take place on __26 May 1999_ at 10:00_ in the premises of the arbitrazh court of the city of Chelyabinsk, ul. Voroskogo 2, in room number _617_, telephone __65-33-70__.
2. To call to the session the parties and also _____.
3. In the process of preliminary preparation of the case for hearing to propose to the persons participating in the case that they complete the following actions:

3.1. To the plaintiff (petitioner) [it is proposed] to present the documents stated in points _____ of the "list" given on the other side of this determination, and also ____the decree on the registration of the enterprise_____
_____
_____

3.2. To the respondent [it is proposed] to present the documents stated in points _____ of the "list" given on the other side of this determination, and also:
_____ a justified response [to the petition of suit], with the normative and documentary bases for the challenged decision_____
_____
_____

Judge: [signature]

Note: In correspondence you must refer to the number of the case. In accordance with point 3 of Article 119 of the APC RF, in the case of failure of a plaintiff who has been properly notified of the time and place for the consideration of the case to appear in the court session, **the dispute may be resolved only in the presence of a petition of the plaintiff for the consideration of the case in his absence, and otherwise the case will be left without consideration in accordance with point 6 of Article 87 of the APC RF.**

[Translator's Note: The determination shown here is a form document containing blanks which are to be filled in as appropriate by the judge deciding whether the case is to be accepted for consideration. Points not relevant to the particular case are simply left blank, as point 2 in the example shown. The reverse side of the determination contains a standard list of documents that may be necessary in cases of particular types. For example, under the first category heading "Legal Position (Authority) of a Person" there are listed eight types of documents (charter of an enterprise, founding contract, power of attorney, evidence of registration of an individual entrepreneur, and so forth), each numbered 1.1 through 1.8, so that the judge may simply inset their numbers into the form for the determination under points 3.1 and 3.2.]

Appendix C: Amendment to Claims of Suit

Arbitrazh Court for Samara Oblast
[address of the court]

Plaintiff: OAO AKB "TOKOBANK"
[address]

Respondent: ZAO "Ekvator"
[address]

(Motion on change in the sum of the claims of the suit)
[above title written by hand above that below]

Addition to Petition of Suit on the Exaction of Indebtedness

The arbitrazh court of Samara Oblast has accepted for proceedings a petition of suit by AKB "TOKOBANK" in the person of its Samara branch office concerning the exaction of indebtedness for credit against ZAO "Ekvator."

In accordance with the account for the claims of the suit, the indebtedness on 25/12/98 consisted of

3,570,000 rubles.

However, the Respondent has not to the present time fulfilled its obligations under the credit contract in full, in connection with which the Plaintiff has conducted a recalculation of the interest due for use of the credit through 09/04/99 inclusive and the penalty for violation of payment obligations. The indebtedness on 09/04/99 consisted of **4,086,250 rubles**, of which:

3,000,000 rubles is the underlying debt
1,086,250 rubles is the debt for interest due, including at a higher rate [due to failure to pay on time], of which

826,250 rubles is the debt for interest due for use of the credit
260,000 rubles is a penalty

On the basis of that set forth and in accordance with Article 37 of the APC RF

I REQUEST

That **4,086,250** (four million eighty-six thousand two hundred and fifty) rubles be exacted from the Respondent in favor of the Plaintiff.

Attachments:

1. Accounting of the indebtedness of the Respondent to the Plaintiff
2. Copy of Power of Attorney No. 227 for T.P. Kalinkina

For AKB “TOKOBANK” T.P. Kalinkina
By Power of Attorney No. 227 of 29/03/99

[signature]

Appendix D: Response to a Petition of Suit

ZAO "Ekvator"
443070 Samara
ul. Aerodromnaya 13
[telephone & fax numbers]

Arbitrazh Court
Samara Oblast

Copy to: Samara Branch
OAO Stock Commercial Bank
"TOKOBANK"
443083, Samara
ul. Zaporozhskaya 19

RESPONSE
To Petition of Suit in Case No. A55-329/99-23

OAO AKB "TOKOBANK," in the person of its Samara branch office on 29/12/1998 presented a suit against ZAO "Ekvator" concerning the exaction from ZAO "Ekvator" of indebtedness in the sum of 3570000 rubles, according to credit contract No. 32/97 of 11/04/97.

ZAO "Ekvator" does not accept the claims made by the bank for the following reasons:

On 11 April 1997, credit contract No. 32/97 was concluded between ZAO "Ekvator" and OAO "TOKOBANK".

In accordance with the stated contract, credit in the sum of 1000000000 old rubles was provided by the bank to ZAO "Ekvator.".

ZAO "Ekvator" has fulfilled its obligations concerning the return of monies under credit contract No. 32/97 of 11/04/97.

The credit was paid off on 25/12/97, which is confirmed by the notation of the bank showing the movement of monies through the debt account No. 10477354 of ZAO "Ekvator" and the memorandum order No. 10 of 25/12/97, confirming the deduction of monies by the bank from the settlement account of ZAO "Ekvator" in payment of the indebtedness for 25/12/97.

In accordance with point 5.1 of the credit contract No. 32/97 of 11/04/97, that contract loses force after the complete payment by the borrower of the credit and the payment of the interest.

Thus, the effect of credit contract No. 32/97 of 11/04/97 was terminated on 25/12/97. The given contract between the parties was not prolonged. Additional agreements to the credit contract No. 32/97 of 11/04/97, signed by the parties after the termination of the effect of the disputed contract are void.

As follows, the claims of suit of the bank, based on the credit contract No. 32/97 of 11/04/97, are not proper.

On the basis of that set forth, the court is requested to reject the suit of AKB "TOKOBANK" against ZAO "Ekvator."

Attachments:

1. Notation of the bank on the movement of monies in the loan account No. 10477354 of ZAO "Ekvator."
2. Memorandum order No. 10 of 25/12/97.

For ZAO "Ekvator" I. P. Pavlova
Representative by Power of Attorney of 01/03/99

Appendix E: Petition for Recusal of Judge; Determination on Recusal Petition

To: Arbitrazh Court for Moscow Oblast

Plaintiff: ZAO "Social Initiative"
[address]

Respondent: OAO "Scientific-Production Association "Energomash" in the name of V. I. Glushko
[address]

PETITION

On the Recusal by Request of the Plaintiff of Judge G.G. Kuskov

I.

Exercising the right envisioned in Article 33 of the APC RF, I hereby petition for the recusal of Judge Kuskov, G.G. on the basis envisioned in point 3 of Article 16 of the APC RF.

In accordance with point 3 of Article 16 of the APC RF, "A judge may not participate in the consideration of a case and is subject to recusal:

. . . . 3) if he personally, directly or indirectly, is interested in the outcome of the case or there are other circumstances which give rise to doubt about his impartiality."

I believe that the following actually occurring facts are "other circumstances giving rise to doubt about the impartiality " of the judge.

II.

In a determination of 26/10/99, Judge Kuskov proposes to the parties, among other things, to present "copies of all court acts adopted in cases connected with the construction of buildings No. 5 and 5"a" (properly certified)."

In connection with this the following question cannot fail to arise:

How could facts of court cases between the parties be known to Judge Kuskov if:

1) there is no mention of them in the suit;
2) a response to the suit by the respondent was not presented to the court, and at the time of the issuance of the determination concerning the appointment of the case for hearing could not yet have been presented.

Moreover, the judge demands neither more nor less than properly certified copies of court acts, presupposing a controlling force of these acts!

The circumstances set forth above completely clearly demonstrate that Judge Kuskov, already before the issuance of his determination on the appoint of the case for hearing, exhibited direct interest in the outcome of the case by conducting an inquiry and collection of information on circumstances having no relationship to the subject of the dispute, and about which he could not and should not have known until the beginning of the court consideration.

Taking account of all set forth above, I believe that the fact of the existence of circumstances giving rise to doubt about the impartiality of Judge Kuskov and his personal interest in the outcome of the case has been shown, and the present petition on the recusal of Judge Kuskov is well founded and is subject to satisfaction.

III.

The case filed by the plaintiff in the court on 22/10/99 was appointed for hearing on 22/12/99, that is, in violation of Article 114 of the APC RF on the day following the expiration of the time period envisioned in the given Article for the consideration of the case and the adoption of a decision.

I believe that there are two possible reasons for the failure of Judge Kuskov to observe the period, envisioned by Article 114 of the APC RF, for the consideration of the case filed by myself, the representative of ZAO “Social Initiative” V. I. Kharchenko.

The first possible reason — is the desire of Judge Kuskov, on the basis of the above-stated interest, not to allow the fastest legal issuance of a decision, by using the usual delays.

The second possible reason for the violation of the period for the consideration of the case by the Judge — is the settling of personal scores with me.

On 07/08/99 I submitted a complaint about the actions of Judge Kuskov in connection with the delays he caused in the case of the Individual Private Enterprise (later a limited liability society) “Atlantic” against the Associated Central Base of the Ministry of Internal Affairs.

It is possible that this could be forgotten, if it were not for one important circumstance that became know to me much later after the submission and consideration of my complaint against Judge Kuskov.

In the normal consideration of the dispute between ICP (OOO) "Atlantic" and the Ministry of Internal Affairs, Judge Makovskaya was recognized by the plaintiff as a former employee of the respondent, which was the basis for the recusal of Judge Makovskaya, and for the submission in relation to her of a complaint to the qualifications collegium. And only during the process of the submission and consideration of the petition and complaint did I learn that Judge Makovskaya was the person with whom Judge Kuskov discussed the desirability of acceptance of the suit of ICP "Atlantic" for proceedings. The point is, that the initial petition of suit of ICP "Atlantic" was based on more than 50 contracts, settlements for which had been conducted together by means of mutual set-off and completed with the signature of an "act of consolidation" which revealed the existence of a dispute. Judge Kuskov, to whom the case came, demanded the submission of a separate suit for each contract, which destroyed the scheme of mutual set-offs existing between the parties and complicated the possibility of proof. It is possible that this could be considered [simply] the legal position of Judge Kuskov, but he came to this position during a discussion with me, with the participation of Judge Makovskaya, whose interest became known only much later, during the consideration of the cases on each contract separately.

In the current case Judge Kuskov exhibited an interest in the outcome of the case. And then the situation with the suit of ZAO "Social Initiative" became not a single instance but part of a tendency. The tendency of Judge Kuskov toward an "original" approach to the consideration of cases received by him for proceedings. The "originality" of this is expressed in the coordination of his position and his procedural actions with third parties, not having any procedural relationship to the case, but having their own real interest in it — or, as was stated above, the actions of Judge Kuskov are a desire to settle accounts personally with me for the complaint I made against him.

On the basis of that set forth above, I request that the court recognize the petition as well founded, and the request for recusal — as subject to satisfaction.

Attachments:

1. Remarks of the qualifications collegium of 02/10/97
2. Determination of the Moscow Oblast Arbitrazh Court of 26/05/99 [case no.]
3. Determination of the Moscow Oblast Arbitrazh Court of 26/10/99 [case no.]

Representative of
ZAO "Social Initiative" [signature] V.I. Kharchenko

22 December 1999

Arbitrazh Court of Moscow Oblast
[address]

D E T E R M I N A T I O N

"_22_" __December_ 199_9 Case No. __A41-K1-14303/99_

The Arbitrazh Court for Moscow Oblast, in the composition of:

Presiding Judge __PanchenkoV.S. _____

Judges:_____

Considered in a court session the ~~suit of~~ __petition_____
(name of the plaintiff)

___ZAO "Social Initiative"_____

against _____
(name of the respondent)

_____

concerning ____recusal of Judge Kuskov, G.G._____

_____

with the participation in the session of

_____

__the representatives of the parties (see the record)_____

_____

_____

has established: The petition of ZAO "Social Initiative" concerning the recusal of Judge G.G. Kuskov was considered.

The petition is grounded in the existence of circumstances of an interest of the judge, expressed in the receipt of additional information, not from the parties to the case, during the appointment of the case for hearing. In addition, the petitioner refers to the violation by the judge of the procedural periods during the appointment of the case for hearing, and also to the possibility of the settlement of a personal account with the representative of the plaintiff.

The representative of the respondent considers that there is no basis for the satisfaction of the present petition in accordance with the norms of procedural legislation.

Judge Kuskov did not provide an explanation on the petition made, being guided in this by part 1 of Article 20 of the APC RF.

Having considered the present petition, I consider that it is not subject to satisfaction for the following reasons: see other side

[on the other side of the determination form]

In accordance with point 3 of part 1 of Article 16 of the APC RF, a judge may not participate in the consideration of a case and is subject to recusal if he personally, directly or indirectly, is interested in the outcome of the case or there are other circumstances giving rise to doubt about his impartiality.

No documentary evidence was presented by the petitioner confirming the existence of a basis for the recusal of the judge as envisioned in the stated norm of the law.

The existence, in the opinion of the plaintiff, of specific violations of the norms of procedural law, is not a subject for discussion in the consideration of the question of the recusal of a judge. In case of failure to agree with a court act that is adopted, the petition has the right to appeal it in the established manner, referring in this to the violations, in his opinion, of the requirements of the procedural legislation.

No evidence was likewise presented to the court of the existence of circumstances giving rise to doubt about the impartiality of the judge, that is, influence on his professional activities on the part of anyone.

It is necessary to note that the effective Arbitrazh Procedure Code of the RF does not envision the possibility of satisfaction of a petition on the recusal of a judge due to the submission by persons participating in the case of any kind of complaint about the actions of the judge in a case earlier considered by him.

Taking into account that set forth and being guided by Articles 16 and 20 of the APC RF

D E T E R M I N A T I O N:

The petition of ZAO “Social Initiative” for the recusal of Judge Kuskov G.G. is to be left without satisfaction.

Deputy Chair V.S. Panchenko

Appendix F: Petition for Security of Suit (Arrest of Property) and Determination

To the Higher Arbitrazh Court of
The Republic of Buryatia
[address]
Judge S. L. Kazantsev

PETITION
(on the imposition of arrest on property)

A case concerning the suit of OOO NPKF "F-Gima" against AOOT "Chelutailes" concerning the exaction of 375,838,776 rubles is currently in proceedings before You, and is appointed for hearing on 1 December 1997.

Making recourse with this petition and exercising its procedural right, the plaintiff considers that there is a real threat of impossibility in the future of execution of the court act. The plaintiff associates this concern with the fact that the respondent is insolvent and openly announces its financial position. However, the plaintiff has information that the respondent has property that may be used to pay the amount of the suit. The actions of the plaintiff wholly arise from the Decree of the Plenum of the Higher Arbitrazh Court of the RF of 31 October 1996 "On the Application of the Arbitrazh [Procedure] Code of the RF in the consideration of cases in the court of the first instance:"

The plaintiff has the following property:

- a railway path of 10 kilometers
- spur lines on the railway lines
- working forest
- auto and tractor parks
- equipment for cutting sleepers

Taking into account the arguments set forth concerning the financial and property position of the respondent and being guided by Article 76 of the APC of the RF,

I REQUEST:

That the court accept this petition for proceedings and issue a determination on the imposition of arrest on the property of the respondent, specifically:

1. a railway path of 10 kilometers
2. spur lines on the railway lines
3. working forest
4. auto and tractor parks
5. equipment for cutting sleepers

Director	[signature]	G.I. Fedik
Counsel	[signature]	S.D. Karpenko

Arbitrazh Court of the Republic of Buryatia
[address]

D E T E R M I N A T I O N

On Security for a Suit

City of Ulan Ude Case No. _A10-186/12_

22 June 1998
___Judge Kovalev N.A.___
Family name, initial [of judge]

Having considered the petition of __OOO NPKF "F-Gima"_____
Name of the petitioner

Concerning adoption of measures of security for the suit of __OOO NPKF "F-Gima"__
Name of the plaintiff

Against ___AOOT "Chelutailes"_____
Name of the respondent

Concerning ___exaction of 375838796 rubles__

Has established: The plaintiff requests that measures for the security of the suit be applied to the respondent in the form of the arrest of its property.

Taking into account the fact that the respondent is not executing voluntarily its obligations according to a settlement agreement which was confirmed by the determination of arbitrazh court of the Republic of Buryatia of 03/03/98, the court considers that the motion of the plaintiff is subject to satisfaction since the failure to take such measures may make difficult or impossible the execution of the determination of the court.

Being guided by Articles 75 and 76 of the Arbitrazh Procedure Code of the Russian Federation

HAS DETERMINED:

1. ___To satisfy the motion of OOO NPKF "F-Gima" and to impose arrest on the property of the respondent AOOT "Chelutailes" on the sum of 375,838 rubles and 80 kopecks until the execution of the determination of the court, and to issue an execution order._____
2. This determination may be appealed to the Arbitrazh Court for the Republic of Buryatia.

Judge [signature] N.A. Kovaleva

Appendix G: Determination on Hearing Delay and Calling of Witnesses

Arbitrazh Court for Moscow Oblast
[address of the court]

D E T E R M I N A T I O N

"_16__" _September__ 199_9 Case No. __A41-K1-11146/98__

The Arbitrazh Court for Moscow Oblast, in the composition of:

Presiding judge ____Vinogradova, N. N._____

Judges: _____

Has considered in a court session the case concerning the suit of_____
(name of the plaintiff)

_____G.P. [State Enterprise]Yegorovski ForestryUndertaking_____

against _____OAO Yegorovski LPX"_____
(name of the respondent)

_____

concerning ____exaction of 11,087 rubles_____

_____

with the participation in the session of

_____

_____Plaintiff: Shevchuk, E. V. - Dir._____

_____Respondent: Marshev, T. F. - forest master, Premichkov, R. A. - representative

by _____power of attorney_____

has established:

G.P. Yegorovski Forest Undertaking made recourse with a suit concerning the exaction of 11,087 rubles as the sum of a penalty for unsatisfactory clearing of forest, by act witnessing [this unsatisfactory state] of 21/05/99, in connection with the timber cutting permit No. 19 of 09/02/98.

The respondent did not accept the claims of the suit, because it has a completely different act dated 21/05/99; I. A. Chekina was not present at that location although the act which was presented in court bears her signature; and the act itself is improper evidence. [Respondent] requests that I. A. Chekina be called as a witness.

Taking into account that it is necessary for the parties to present additional evidence, the hearing of the case is delayed.

On the basis of that set forth, and being guided by Article 120 of the APC of the RF, the court

HAS DETERMINED:

To delay the hearing of the case to 14/10/99 at 12:40.

Plaintiff: Is to appear, [and bring] its founding documents (copy for the case materials), and give additional explanation concerning the act.

Respondent: Is to give grounds for its objection to the suit, providing documents, its accounting, and its founding documents (copy for the case materials), and to appear.

Chekina, I. A., and Zhmyakina, I. N. are to be called in the capacity of witnesses in the case.

Judge [signature] **N. N. Vinogradova**

Appendix H: Motion for Demand of Evidence in Control of Others; Court Demand

8 October 1999

Arbitrazh Court for Moscow Oblast
[address of the court]

Plaintiff: OAO "Electronpribor"
[address]

Respondent: ZAO "Feltis"
[address]

Case No. A 41-K1-10920/99

MOTION

(under Articles 33, 54, 118 and 120 of the APC of the RF)

The Arbitrazh Court for Moscow Oblast initiated case No. A41-K1-10920/99 on the petition of OAO "Electronpribor" (hereinafter referred to as "Plaintiff"), concerning the exaction from ZAO "Feltis" (hereinafter referred to as "Respondent") of indebtedness and a penalty fine in the sum of 39,105 rubles, and issued a Determination requiring the Respondent to present evidence disproving the claims of the suit and showing a full or partial payment of the debt, as well as to conduct a summary of accounts. In the given determination, the arbitrazh court appointed the date of 21/10/99 for the session in which the consideration of the case would take place.

The Respondent is unable to fulfill the requirements of the Arbitrazh Court in the stated period due to the fact that since 21/04/99 a tax verification has been underway at the enterprise for the years 1997 through 1999, inclusive. In connection with this, all of the documentation concerning the financial-economic activities of ZAO "Feltis" were taken, including the letter of guarantee of the Plaintiff.

The given fact was reflected by the Respondent in its Motion of 03/09/99.

In addition to that stated above, the Respondent informs the court that on 05/10/99, on the basis of an Instruction of the head of the Federal Tax Police for Moscow Oblast, a search of the premises of the Respondent was conducted and documents were taken. (Attachment No. 1).

ZAO “Feltis” in connection with the impossibility of conduct of a summary accounting of mutual obligations and of proof of its position, which is set forth in its response of 04/10/99, sent an inquiry to the bodies of the tax police on 08/10/99 (Attachment No. 2).

However, documents stated in the inquiry were not provided by the tax bodies.

In connection with this, ZAO “Feltis” considers that for the conduct of a summary of accounting for mutual obligations it is necessary to demand the following documents: petition of ZAO “Feltis” of 06/10/98 sent to OAO “Electronpribor” on 06/10/98, and the letter of OAO “Electronpribor” of 10/11/98.

Thus, the Respondent considers that for the consideration of the case in its substance, the above-listed evidence must be demanded of the Shchelkovski division of the Federal Tax Police for Moscow Oblast.

We simultaneously inform [the court] that no mutual set-off between the Plaintiff and the Respondent for the guarantee letter and the payment instruction has been conducted.

On the basis of that set forth above, ZAO “Feltis,” being guided by Articles 33, 54, 118 and 120 of the APC of the RF

REQUESTS:

1. That an inquiry be sent to the Shchelkovski region tax police for Moscow Oblast [address of the division of the tax police] a demand for the petition of ZAO “Feltis” of 06/10/98 and the letter of OAO “Electronpribor” of 10/11/98.

2. That the tax police for the Shchelkovski region of Moscow Oblast be obligated to provide the above-stated documents be provided to the Arbitrazh Court of Moscow Oblast.

3. In connection with the absence of the necessary documents in the possession of ZAO “Feltis”, that the consideration of the case be delayed for a period defined at the discretion of the court.

Attachments: 1. Copy of the inquiry to the Federal Tax Police of the RF for the Shchelkovski region of Moscow Oblast of 08/10/99, 1 copy on two pages.

2. Records of the search of 05/10/99 Nos. 1/3, 1/4, 1/23 in three copies on six pages.

Representative according to power
of attorney of 04/09/99 [signature] A. V. Kostyunin

ARBITRAZH COURT FOR MOSCOW OBLAST
[address of the court]

To the Federal Tax Police for Shchelkovski region of Moscow Oblast

_21.10.99_ No._A41-K1-10920/99_
Responding to No. _____ of _____

Demand Under Article 54 of the APC RF

Proceedings are being conducted in the Arbitrazh Court for Moscow Oblast concerning a suit of OAO "Electronpribor" against ZAO "Feltis" concerning the exaction of 39,105 rubles.

According to the statement of ZAO "Feltis," a tax verification is being conducted since 21/04/99 at the enterprise for the period of 1997 through 1999 inclusive, in connection with which all documentation concerning the financial-economic activities of the enterprise were taken. On 05/10/99, on the basis of the instruction of the head of the Federal Tax Police of the RF for Moscow Oblast, a search of the premises was conducted and the following documents were taken: petition of ZAO "Feltis" of 06/10/98, sent to OAO "Electronpribor" on 06/10/98, and the letter of OAO "Electronpribor" of 10/11/98.

The given documents are necessary for the consideration of the dispute in its substance.

It is requested that the given documents — the petition of ZAO "Feltis" of 06/10/98, sent to OAO "Electronpribor" on 06/10/98, and the letter of OAO "Electronpribor" of 01/11/98 — be issued directly to the authorized representative of ZAO "Feltis" in connection with the restricted time periods for the consideration of the dispute.

Judge [signature] N. N. Vinogradova

Appendix I: Record (Protocol) of a Court Session

Note: The original of this document is a form document, filled in with hand written notations. The parts of the document appearing in script typeface are those which appear in handwriting on the original. A copy of the Russian language original follows the translation.

Record
of the Court Session

City of *Moscow* Case No. *K 1-11146/99*

"16" September 199 *9*

The arbitrazh court in the composition of:

Presiding Judge *N. N. Vinogradova*

Judges

considers in the court session the case concerning the suit (appeals/cassational complaint

concerning the case) of *State institution Yegorovski*

Forest Undertaking
(name of the plaintiff)

against *OAO "Yegorovski LPKh*
(name of the respondent)

concerning *exac. of 11,087 rubles*

At the court session appeared: (to be stated: the surname, patronymic and name of the representatives of persons participating in the case, their positions, the basis for their authority, other participants in the arbitrazh process) *plaintiff - Shevchuk, E. B.*

by p. of att. N12-3/6 of 14/05/99

respondent - Marshev, T. F. - for. mast. by p. of att. N OP-6 of 14/05/99 (in case file) Premichkov, R. A. - representative by p. of att. N OP-6 of 14/05/99

Of those called to the court session the following did not appear: (state the persons participating in the case, other participants in the arbitrazh process, the reason for their failure to appear)

The presiding judge explained to persons participating in the case and other participants in the arbitrazh process their procedural rights and obligations, envisioned by Articles 33, 44, 45, 46 and 50 of the Arbitrazh Procedure Code of the Russian Federation. *Rights and duties explained. Procedure for appeal explained.*

The following were warned concerning criminal liability:

Witness (witnesses) - for the giving of knowingly false testimony, refusal or avoidance of the giving of testimony:

1. _____ _____
(signature of witness)

2._____ _____

3._____ _____

4._____ _____

[in the original document, these areas are crossed out, indicating no warnings issued]

expert (experts) - for the giving of knowingly false conclusions or refusal to give a conclusion without adequate reason:

1._____ _____
(signature of the expert)

2._____ _____

3._____ _____

4._____ _____

translator - for knowingly incorrect translation _____

(signature of translator)

Petitions and motions of persons participating in the case. Determinations issued by the court without withdrawal from the courtroom. *Court session was opened. No recusals to the court or motions made Plaintiff objects to the consideration of the case, considers that ac*t [document] n*ot in accord with require. No signature in act, requests that [names of three persons] be called in the capacity of witnesses. Request satisfied. Parties withdrew from courtroom. Motivated determination issued, determination read out. Distributed to parties against signature. Court session closed. Judge N.N. Vinogradova* [signature]

ПРОТОКОЛ
СУДЕБНОГО ЗАСЕДАНИЯ

город Москва   № дела К1 11146/99

"16" сентября 1999 г.

Арбитражный суд в составе:

председательствующего Виноградова И.К.,

судей ______________________________

рассматривает в судебном заседании дело по иску (апелляционную, кассационную жалобу по делу) Государственное учреждение Угорьевский лесхоз

(наименование истца)

к ОАО "Угорьевский ЛПХ"

(наименование ответчика)

о вз. 11 087 руб.

В судебное заседание явились: (указываются: фамилия, и.о. представителей лиц, участвующих в деле, их должности, основания полномочий, иные участники арбитражного процесса) истец – [illegible] по дов. N 12-3/6 от 14.09.99 ([illegible])

ответчик – [illegible] Т. Ю. – [illegible] по дов. N ОП-6 от 14.09.99 ([illegible])

[illegible]

N [illegible]

Из вызванных в судебное заседание не явились: (указываются лица, участвующие в деле, иные участники арбитражного процесса, причина их неявки) ______________

Председательствующим разъяснены лицам, участвующим в деле, и иным участникам арбитражного процесса их процессуальные права и обязанности, предусмотренные статьями 33, 44, 45, 46, 50 Арбитражного процессуального кодекса Российской Федерации.

Предупреждены об уголовной ответственности:

свидетель (свидетели) - за дачу заведомо ложных показаний, отказ или уклонение от дачи показаний;

1.
2.
3.
4.
5.

(подпись свидетеля)

эксперт (эксперты) - за дачу заведомо ложного заключения или отказ от дачи заключения без уважительных причин

1.
2.
3.
4.
5.

(подпись эксперта)

переводчик - за заведомо неправильный перевод.

(подпись переводчика)

Заявления и ходатайства лиц, участвующих в деле. Определения, вынесенные судом без удаления из зала заседания.

Appendix J: Inquiry by Arbitrazh Court to Constitutional Court

ARBITRAZH COURT OF BRYANSK OBLAST

[court address]

To the Constitutional Court of the Russian Federation

__4__ ___07___ 1996

No. __391__

From the Arbitrazh Court of Bryansk Oblast in the composition of Judge Nina Sergeevna Gomanyuk, considering Case No. 263/20 on the suit of the limited liability partnership "Idos" of the city of Bryansk against the Bryansk Customs authority concerning the recognition of collection instruction No. 30 of 03/04/96 as void.

INQUIRY

On the Verification of the Constitutionality of the First Paragraph of Article 2 of the Federal Law No. 23-FZ "On Excises," Adopted by the State Duma 14 February 1996 and Published in [the newspaper of record] Rossiskaya Gazeta No. 48 (1408) of 13/03/96

The Arbitrazh Court of Bryansk Oblast in the composition of Judge N.S. Gomanyuk is considering a case concerning the suit of the limited liability partnership (LLP) "Idos" of the city of Bryansk against the Bryansk customs authority concerning the recognition as void of collection instruction No. 30 of 03/04/96, which was presented to the LLP "Idos" by the Bryansk customs authorities concerning the automatic deduction from its account of 30,193,049 rubles in excise fees.

During the court consideration, the court established that in the exaction from the plaintiff of the stated sum, the customs authorities were guided by the Federal Law No. 23-FZ of 07/03/96 "On the Introduction of Amendments in the Law of the Russian Federation "On Excises"" [citations to original publication and amendments of the law omitted]. The named Federal Law, as stated in the court session by the respondent, allows the imposition of tax on goods originating in the countries of the Commonwealth of Independent States and brought onto the territory of the Russian Federation beginning with 1 February 1996, which follows from the first paragraph of Article 2 of the Federal law "On the Introduction of Amendments in the Law of the Russian Federation "On Excises"", in accordance with which the named act enters into force from 1 February 1996.

The plaintiff objects to the augments of the respondent referring to Article 57 of the Constitution of the Russian Federation, in accordance with which laws can not have retroactive force where they make the position of the taxpayer worse. Moreover, the plaintiff made a request that the [arbitrazh] court would make recourse to the Constitutional Court of the Russian Federation with an inquiry on the verification of the constitutionality of Article 2 of the Federal Law "On the Introduction of Amendments to the Law of the Russian Federation "On Excises"".

The court, having heard the arguments of the parties and having considered the request made, satisfied it, since it came to the conclusion that in the given instance there is a lack of correspondence between the provisions contained in the first paragraph of Article 2 of the Federal Law "On the Introduction of Amendments in the Law of the Russian Federation "On Excises"" and Article 57 of the Constitution of the Russian Federation. The proceedings in the case were suspended in connection with this.

The position of the court consists of the following:

As a result of the adoption by the legislator of the Federal Law "On the Introduction of Amendments in the Law of the Russian Federation "On Excises"" there occurred a worsening in the position of a particular group of taxpayers. In particular, the subjects of entrepreneurial activity, among whom is included the plaintiff in the case under consideration, did not in accordance with the Law of the Russian Federation "On Excises" pay excises on goods originating on the territory of the member states of the Commonwealth of Independent States and brought onto the territory of the Russian Federation until 1 February 1996. In addition, the effect of the Federal Law "On Excises" was extended by the legislator to relations [events] which existed prior to the time of its passage by the State Duma (14 February 1996), approval by the Council of the Federation (22 February 1996), signature by the President of the Russian Federation (7 March 1996) and official publication (13 March 1996).

Thus, the court considers that the Federal Law "On the Introduction of Amendments in the Law of the Russian Federation "On Excises"" which is subject to application in the case under consideration possesses all of the elements that would allow the statement that it is not in accord with the provision of Article 57 of the Constitution of the Russian Federation, in accordance with which laws making the position of a taxpayer worse may not have retroactive force. In this the court proceeds from the fact that the concept of "taxpayers" used in Article 57 of the Constitution of the Russian Federation encompasses all of the subjects of the law upon which the law imposes the obligation to pay taxes. In the opinion of the court, the fact of the location of the named constitutional norm in Chapter 2 "Rights and Freedoms of the Person and the Citizen" does not restrict in the given instance the content of the concept of "taxpayers" only to individual citizens.

Moreover, in the court's view, the failure of the law to conform to the Constitution of the Russian Federation occurred in the given instance as a result of violation by the legislator of the procedure for the entry of the law into effect. This type of failure of a

normative act to correspond to the Constitution of the Russian Federation is mentioned, in particular, in point 3 of part 1 of Article 86 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation.”

In connection with that set forth and proceeding from the fact that the Federal Law “On the Introduction of Amendments in the Law of the Russian Federation “On Excises”” is subject to application in the case under consideration and being guided by part 4 of Article 125 of the Constitution of the Russian Federation, point 3 of part 1 of Article, point 3 of part 1 of Article 86, and Articles 101-104 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation,”

I REQUEST:

The verification of whether the first paragraph of Article 2 of the Federal Law “On the Introduction of Amendments in the Law of the Russian Federation “On Excises”” is consistent with Article 57 of the Constitution of the Russian Federation.

Attachments:
1. Text of the inquiry in 30 copies.
2. Official texts of the Federal Law “On the Introduction of Amendments in the Law of the Russian Federation “On Excises”” in 30 copies.
3. Determination on the acceptance of the petition of suit for proceedings and the appointment of the case for court consideration (30 copies).
4. Record of the court session (30 copies)
5. Determination on the suspension of proceedings in the case and recourse to the Constitutional Court of the Russian Federation with an inquiry (30 copies).

Appendix K: Decision of an Arbitrazh Court in theFirst Instance

In the Name of the Russian Federation

DECISION

City of Samara Case No. A55-329/99-23_

_12 April 1999

The Arbitrazh Court for Samara Oblast

In the composition of:

Presiding judge __Evstifeeva, V.V._____
And judges _____
Having considered in a court session the case concerning the suit of _____OAO _____
"Tokobank" in the person of its Samara branch in the city of Samara_____
_____
against: _ZAO "Ekvator" of the city of Samara_____
_____
concerning _____the exaction of 3570000 rubles due_____
_____

With the participation in from the plaintiff - head of the legal department the session of: T.P. Kalinkina (power of attorney dated 29/03/99), from the respondent - I.P. Pavlov (power of attorney dates 01/03/99) and A.A. Samoilov (power of attorney dated 01/03/99)

The plaintiff, taking account of the petitions of01/03/99 and of 09/04/99, requests the exaction from the respondent of 4086250 rubles, including 3000000 rubles in debt for credit received and 1086250 rubles in debt for interest (including at an increased rate [due to late payment]) according to contract No. 32/97 of 11/04/97, with account for the additional agreement of 26/12/97.

The respondent did not admit the suit, considering that in accordance with credit contract No. 32/97 it received credit in the sum of 1000000 rubles, which was timely returned to the plaintiff, and that no credit was issued to it on the basis of the additional agreement of 26/12/97.

During the session, a break in the hearings was announced of three days.

Taking into consideration that in accordance with the credit contract of the parties No. 32/97 of 11/04/97 the plaintiff on 14/04/97 issued to the respondent 1000000000 rubles (in 1998 denomination 1000000 rubles) for a period (taking into account the additional agreement No. 4 of 15/07/97) through 15/12/97 with a 45% yearly interest rate. The rate of interest for use of the credit was changed several times by additional agreements to the contract. According to memorandum order of 25/12/97, the indebtedness for the credit in the sum of 1000000000 rubles was extinguished by the respondent.

In accordance with the corrected account of the plaintiff, on 25/12/97 the respondent remained indebted for the interest for the use of the credit in the sum of 20666 rubles, 67 kopecks. During the court session no support was found for the statement of the respondent that on 25/12/97 it was not indebted to the plaintiff for interest, since the plaintiff failed to take account of the payment orders No. 237 of 24/07/97, No. 338 of 29/09/97, No. 314 of 16/09/97, No. 377 of 28/10/97 and No. 434 of 27/11/97, for the overall sum of 37833334 rubles (in 1998 prices). In all of the listed payment orders, the purpose of the payment is listed by the respondent as payment on a loan account, and not interest for the use of a credit.

During the period of effect of the credit contract No. 32/97 of 11/04/97, two additional agreements to it were concluded by the parties, in accordance with which the plaintiff opened for the respondent a credit line in the amount of up to 3000000000 rubles with a period for payment of 25/12/98, and in additional agreement No. 14 of 26/12/97 the plaintiff obligated itself within three days of its conclusion to transfer according to the information stated by the respondent 3000000000 rubles for a period until 15/10/98 (points 2 and 3 of the agreement). At the same time, in point 1 of the additional agreement it is envisioned that the plaintiff will issue a so-called “bill of exchange credit,” that is, the issuance of four simple bills of exchange [veksels] of the bank, series DB Nos. 0004764, 0004765, 0004766 and 0004767, for an overall sum of 3000000000 rubles. For the use of the credit in the additional agreement No. 14 there is envisioned a payment in the amount of 10% yearly from the date of the creation of the indebtedness until the date of payment by the bank of the bills of exchange and 31% per year from the date of the payment of the bills of exchange until 15/10/98.

In fact, monetary assets in the sum of 3000000000 rubles as a credit to the respondent were not issued by the plaintiff, in connection with which it does not have the right to claim their return from the respondent and the payment of interest for their use by the respondent on the basis of the credit contract.

In the materials of the case there is an act confirming the transfer by the plaintiff of the stated bills of exchange to the respondent, however the obligation of the respondent to the plaintiff in connection with this may not be based upon the credit contract of the parties.

Taking account of that set forth, the suit should be refused.

In connection with the expiration of the delay in payment of the state fee granted to the plaintiff, the fee is subject to exaction from [the plaintiff] into the federal budget in the amount of 32031 rubles, 25 kopecks.

Being guided by Articles 124 and 125 of the APC RF,

THE COURT HAS DECIDED:

The suit is refused.

There shall be exacted from OAO Stock Commercial Bank “Tokobank” of the city of Moscow into the federal budget the sum of 32031 rubles, 25 kopecks as the state [filing] fee.

An execution order shall be issued after the entry of the decision into legal force.

Judge V.V. Evstifeev [signature]

Appendix L: Appeal Complaint; Acceptance of Complaint; Response to Appeal Complaint

Arbitrazh Court for Samara Oblast
[address of the court]

Plaintiff: OAO Stock Commercial Bank "TOKOBANK" in the person of its representative
[address of the Samara branch]

Respondent: ZAO "Ekvator"
[address]

Value of the suit: 4,086,250 rubles
State fee: 16,015 rubles, 62 kop.

APPEAL COMPLAINT
On the Decision of the Arbitrazh Court of Samara Oblast of 12 April 1999 in Case No. A55-329/99-23

The arbitrazh court for Samara Oblast on 12 April 1999 adopted a decision on the refusal to satisfy the claims of the Plaintiff concerning the exaction from the Respondent of indebtedness due in the amount of 4,086,250 rubles, taking account of the amended claim through the procedure of Article 37 of the APC RF.

The given decision of the court was issued in crude violation of the norms of substantive and procedural law, and is illegal and without basis. The court avoided the consideration of the dispute in its substance. It did not give the correct legal qualification to the actual legal relationship of the parties, did not analyze and did not evaluate the evidence presented, and did not decide the question of the existence of rights and obligations of the parties in relation to the material object of the dispute.

In fact, the court limited itself to a finding that the credit to the Plaintiff was issued in the form of the transfer of four bills of exchange, a so-called bill of exchange credit on the basis of the additional agreement No. 14 of 26/12/97, in the sum of 3,000,000 rubles. But since, in the opinion of the court, the obligation of the Respondent cannot be based upon a credit contract, then the Respondent is not obligated to return anything.

T**he conclusion of the court that the legal relations which developed between the Plaintiff and the Respondent could not be determined by a credit contract is incorrect, since the contract does not contradict any norm of legislation and was not recognized as void. And although it is not directly envisioned by law, on the basis of the general principles and the meaning of civil legislation it gives rise to civil-law**

rights and obligations of the parties in accordance with point 1 of Article 85 of the Civil Code of the RF.

The court completely ignored the evidence presented by the Plaintiff of the existence and lack of execution of obligations on the part of the Respondent concerning the payment of indebtedness, specifically:

On 11 April 1997, credit contract no. 32/97 was concluded between the Plaintiff and the Respondent. In accordance with point 1.1, the Respondent was provided credit in an amount of 1,000,000 rubles. For the conduct of banking operations concerning the credit, a credit account No. 45206810100160000037 was opened for the Respondent, on the basis of a notation from the tax inspectorate No. 4612.

In accordance with additional agreement No. 14 of 26/12/97 to the credit contract 32/97 of 11/04/97, the Respondent was provided with a bill of exchange credit, that is was provided a loan with the use of the bills of exchange without the purchase by the client of the bills of exchange of the bank. This type of credit is regulated by banking rules, including the Instructions of the Central Bank of the RF No. 26 of 23/02/95. Being guided by this the Plaintiff, in the issuance of the credit, took the following banking actions:

> deposited the sum of 3,000,000 rubles into the credit account, and from the credit account transferred them to the bill of exchange account of the client No. 1019677, opened o the basis of the instruction of 26/12/97. On the basis of the acknowledgement-acceptance, the Respondent received the bills of exchange, which was confirmed by the court of the first instance.

The Plaintiff by the given contract took upon itself the obligation to issue to the Respondent its own bills of exchange and upon the presentation of the bills of exchange to pay them. The Plaintiff showed by all of the material presented that it executed its obligations under the contract. The Respondent obligated itself to return the money in an amount equal to 3,000,000 and to pay interest in the procedure defined by the additional agreement No. 14. The Respondent did not execute its obligations. No evidence was presented of the payment of the indebtedness.

In the consideration of the given dispute it is important to answer only one question — did the Plaintiff provide money (credit) to the Respondent in the procedure and on the conditions envisioned by the credit contract? (Article 819 of the Civil Code of the RF).

In citing Article 819 of the Civil Code of the RF, the court interpreted literally the term “money” which is contained in the norm and did not take into account the statement of the law “in the amount and on the conditions envisioned in the contract.” And in addition to this, in accordance with Articles 861-862 of the Civil Code of the RF, the provision of money (banking operations) is conducted in a non-cash form. In the accomplishment of non-cash settlements, payment is permitted (Article 862 of the Civil

Code of the RF) by payment order, by credit, by check, by bank transfer, and also settlement in any other forms envisioned by law, by banking rules established in accordance with it, and by the customs of business activity applied in banking practice.

In existing banking practice, money on credit is provided by several means: directly transferred to the settlement account of the borrower, by instruction of the client transferred by payment order to the account of a contracting partner for particular purposes (directed use of the credit), or by means of the issuance of bills of exchange of the bank without their purchase.

A BILL OF EXCHANGE — in civil circulation is one of the forms of non-cash settlement, and in credit is a means for the provision of money, since the subject of a bill of exchange is also and only money.

The special features of a bill of exchange as one of the forms of non-cash settlement is that it is issued into the hands of the client and has a period and procedure for its presentation for payment.

Thus, the relations of the parties under the stated contract are, in their legal nature, analogous to those envisioned by Article 819 of the Civil Code of the RF, since money was provided by means of the issuance of simple bills of exchange, allowing the Respondent either to receive the money itself or to use the bill of exchange as a means of payment in a settlement [with another party], which is what it did.

On the basis of that set forth and being guided by Article 810, point 1, Article 8, point 1, and Article 6 of the Civil Code of the RF and Articles 145, 157 of the APC RF,

I REQUEST

1. That the decision of the court of first instance by wholly reversed and that a new decision be adopted.
2. The court costs for the payment of the state [filing] fee be imposed upon the Respondent.

Attachments:

1. Evidence of the sending of a copy of the appeal complaint to the Respondent.
2. Motion for delay in the payment of the state fee;
3. Power of attorney No. 227 of 29/03/99 for the authorized representative of the Plaintiff;
4. A copy of the decision of the arbitrazh court for Samara Oblast of 12 April 1999, No. A55-329/99-23.

For AKB “TOKOBANK” T.P. Kalinkina
By Power of attorney No. 227

[signature]

D E T E R M I N A T I O N

On the Acceptance of an Appeal Complaint for Proceedings

Samara Case No. __A55-329/99-23___

__13 May 1999__

Judge of the Arbitrazh Court of Samara Oblast ___K.G. Viktorova_____, having considered the appeal complaint of ___OAO AKB "TOKOBANK" of the city of Samara___ concerning the decision (determination)

of ___12 April 1999 in case No. ___A55-329/99-23____

Being guided by Article 152 of the Arbitrazh Procedure Code of the Russian Federation

HAS DETERMINED:

1. To accept the appeal complaint of ____OAO AKB "TOKOBANK" of the City of Samara of __07/05/99____, No. __487 VX___ for proceedings.

2. Appoint the case for court consideration in the session of the arbitrazh court on _____11 June___ 199_9_, at ___10:30__ in the premises of the court, room No. __205A__.

The petitioner is granted a delay in the payment of the state fee until the adoption of the court decision._____

Judge K.G. Viktorovna
[signature]

Arbitrazh Court for Samara Oblast

ZAO "Ekvator"
[address]

Copy: OAO AKB "TOKOBANK"
[address]

RESPONSE
To the Appeal Complaint in Case No. A55-329/99-23

The plaintiff in this case — the Samara branch of OAO AKB "TOKOBANK" filed suit against ZAO "Ekvator" concerning the exaction from ZAO "Ekvator" of 3,570,000 new rubles according to credit contract No. 32/97 of 11/03/97 and additional agreements to it No. 14 of 26/12/97 and one without number of 26/12/97. Later, during the course of the court consideration of the case, the sum of the claims of the suit was increased to 4,086,250 rubles.

By a decision of the arbitrazh court for Samara Oblast of 12/04/99, the suit of the Samara branch of OAO AKB "TOKOBANK" was refused, in connection with the failure of the bank to fulfill its obligation to transfer to ZAO "Ekvator" a monetary sum of 3,000,000 rubles and the corresponding lack of right of claim on the part of the plaintiff to the return of the sum of money and the payment of interests for the use of the credit on the basis of credit contract No. 32/97 of 11/04/97.

The plaintiff has filed an appeal complaint concerning the decision of the court of 12/04/99.

ZAO "Ekvator" considers the arguments set forth in the appeal complaint as without basis for the following reasons:

In accordance with the unnumbered additional agreement of 26/12/97 and additional agreement No. 11 of 26/12/97, the bank should have transferred to ZAO "Ekvator" a sum of money equal to 3,000,000 rubles.

The bank did not fulfill its obligation. A monetary sum was not given to ZAO "Ekvator". Moreover, the bank is claiming through court process the return of the above-stated sum and the payment of interest for the use of the credit on the basis of credit contract No. 32/97 of 11/04/97 the additional agreements to it.

In confirmation of the fact of issuance of the credit, the bank refers to the transfer to ZAO "Ekvator" of securities — bills of exchange — and evaluates the given operation as a bill of exchange credit, which contradicts the norms of civil legislation.

Credit contracts may establish only completely monetary obligations - this is the specific feature of the given type of contracts (Article 819 of the Civil Code of the RF,

Decree of the Presidium of the Higher Arbitrazh Court of the RF of 07/07/98, No. 3762/98).

Thus, the obligation of ZAO "Ekvator", in connection with the transfer to it by the bank of bills of exchange may not be based on the credit contract between the parties which is the subject of the dispute. The given fact follows also from the factual circumstances of the case.

The subject of the credit contract No. 32/97 of 11/04/97 and of the additional agreements to it is the opening by the bank for ZAO "Ekvator" of a credit line and the provision to ZAO "Ekvator" of monetary sums by means of the transfer of them to the settlement account of ZAO "Ekvator" or to the settlement accounts of its contracting partners (point 1.2 of the unnumbered additional agreement of 26/12/97 and point 2 of the additional agreement No. 14 of 26/12/97), which was not done by the bank.

As concerns the bills of exchange, transferred by the bank to ZAO "Ekvator" the written document confirming the conclusion of the transaction is the act of transfer and acceptance of the bills of exchange. In the act of transfer and acceptance, the conditions on which the bills of exchange were transferred is not stated.

During the court consideration, despite the statement of the court (determination of 04/03/99), the legal basis for the claims made was never presented by the plaintiff.

The reference of the bank to the Letter of the Central Bank of the RF No. 26 of 23/02/95, supposedly regulating the issuance of so-called bill of exchange credits, is not appropriate, since it envisions the possibility for commercial banks to act only in the capacity of the issuer of a bill of exchange. (point 2 of the Letter) Moreover, the given Letter is not a normative document and has [only] a recommendatory nature for banks in the conduct of their banking operations. In particular, a procedure is recommended to banks for the conduct of accounting steps in the case of issuance by the banks of bills of exchange.

Thus, the claims of the bank, based on a credit contract, and its attempt to impose liability on ZAO "Ekvator" on the basis of the given type of contract are improper.

On the basis of that set forth, we request the appellate instance of the arbitrazh court for Samara Oblast to:

Leave the decision of the Arbitrazh Court of Samara Oblast of 12/04/99 in case No. A55-329/99-23 without change and the appeal complaint of the Samara branch of OAO AKB "TOKOBANK" without satisfaction.

I.P. Pavlova

Representative by power of attorney
No. 181 of 11/06/99

Appendix M: Decree of an Arbitrazh Court of the Appellate Instance

DECREE

Of the Appellate Instance on the Verification of the Legality and Basis for a Decision of the Arbitrazh Court Which Has Not Yet Entered into Legal Force

City of Samara

_15_ __June__ 199_9_ Case No. __A55-329/99-23__

The Arbitrazh Court for Samara Oblast,

in the composition of :

Presiding Judge _____Viktorova, K.G._____
And judges: _____Kornilov, B.A., Balaslov, V. N._____

with the participation in the court session of: _____on behalf of the plaintiff, T.P. Kalinkina, power of attorney of 03/03/99 No. 321_____
_____on behalf of the respondent, A.A. Samoilov, representative by power of attorney of 11/06/99 No. 180 and I.P. Pavlova, power of attorney No. 181 of 11/06/99_____

having considered in the court session the appeal complaint of
___OAO AKB "TOKOBANK" in the person of its Samara branch office, city of Samara_____

concerning the decision (determination) of the arbitrazh court of Samara Oblast

of __12__ __April___ 199_9_, in case No. ___A55-329/99-23_____
_____Evstifeev, V.V._____
(family name of the judge who adopted the court act in question)

has established: The plaintiff made recourse [to the court] with a suit on the exaction from the respondent of 4,086,250 rubles, taking account of the change [in the value of the claim] under Article 37 of the APC RF, including: 3,000,000 rubles in indebtedness under credit contract No. 32/97 of 11/04/97 and the additional agreement of 26/12/97, and 1,086,250 rubles indebtedness for interest, including at a heightened rate.

By a decision of 12/04/99, the suit was refused.

OAO AKB “TOKOBANK” requests that the decision be reversed and the suit satisfied, as it considers that by the additional agreement of 26/12/97 to the credit contract No. 32/97 of 11/04/97, a bill of exchange credit was issued by the bank, which does not violate the norms of civil legislation. A bill of exchange is a means of payment and the issuance of the security instead of the sum of money is not a violation of the requirements of Article 819 of the Civil Code of the RF. The appellant considers that the court crudely violated the norms of substantive and procedural law, which is the basis for the reversal of the decision.

Having considered the materials of the case and having heard the explanations of the parties, the Arbitrazh court has established:

Credit contract No. 32/97 of 11/04/97 was concluded between the parties, in accordance with the conditions of which AKB “Tokobank” provided to ZAO “Ekvator” credit in the amount of 1,000,000 rubles, with a date for repayment of 15/07/97, with interest of 45%.

As a result of an additional agreement of 15/07/97, the date for the repayment of the credit was extended to 15/12/97. The amount of the interests on the credit was changed several times by additional agreements. The materials of the case confirm that the loan in the sum of 1,000,000 rubles and the interest for the use of the credit by were repaid by the borrower on 29/12/97.

By an additional agreement to the credit contract of 26/12/97 “changing the credit contract” (according to the text of the contract), the parties defined the subject of the credit contract (point 1.1) as the opening of a credit line to “the borrower” in the amount of 3,000,000 rubles for current commercial activity, with a date for repayment of 25/12/98.

It is envisioned by point 2.1 that the provision of the credit shall be done by the transfer of sums to “Borrower” or by its instruction to the account of a contracting partner.

On 26/12/97, that is, on the same day, the parties signed one more additional agreement, No. 14, point 1.1 of which defines the subject of the contract as a bill of exchange credit in the amount of 3,000,000 rubles, and the procedure for the presentation — as the issuance of four simple bills of exchange of the bank.

However, point 2 of the additional agreement No. 14 envisions that the bank is obligated to transfer a sum of money in the amount of 3,000,000 rubles according to the instructions of the “Borrower” — that is, not to the “Borrower” itself, while the latter is obligated to repay the credit and the interest for it not later than 10/15/98.

Thus, analyzing the text of the two additional agreements of 26/12/97, the court has arrived at the conclusion that the parties in concluding the additional agreements of 26/12/97 to the contract No. 32/97 did not come to a determination concerning a

significant condition — the subject of the credit contract. (Article 432 of the Civil Code of the RF).

Without definition of the subject of the contract it is not possible to consider the additional agreements to it to have been concluded.

In addition, under part 1 of Article 819 of the Civil Code of the RF, the subject of a credit contract is a sum of money, which a bank or other credit organization provides to a borrower, but not other things defined by their characteristics. The stated norm of the Civil Code is imperative. The reference of the plaintiff to the fact that the conditions for the provision to the "Borrower" of the credit of 3,000,000 rubles as a sum of money are void and that the conditions for the issuances of a credit by bills of exchange should be considered to have effect is not appropriate, since in the case of a conflict with the contract conditions, the imperative norm has absolute priority. The plaintiff did not provide any evidence of the provision of a sum of money in the amount of 3,000,000 rubles.

In accordance with the legislation in effect, a bill of exchange is a security, that is, it is not money.

Under the conditions stated above, the conclusion of the court concerning the absence of obligation of the respondent to the plaintiff under the credit contract should be recognized as properly based and the decision legal, in connection with which there is no basis for the satisfaction of the appellate complaint.

Proceeding from that set forth and being guided by Article 159 of the APC RF -

THE ARBITRAZH COURT HAS DECREED:

The decision of 12/04/99 is to be left without change and the appellate complaint without satisfaction.

16,015 rubles 56 kopecks state fee is to be exacted from OAO "Tokobank" in the person of the Samara branch office into the federal budget of the RF.

This decree shall enter into legal force from the time of its adoption.

Presiding Judge	[signature]	K.G. Viktorova
Judges	[signature]	Balaslov, V. N.
	[signature]	Kornilov, B. A.

Appendix N: Cassational Complaint

Federal Arbitrazh Court for
the Urals Circuit
[address]

Respondent: State Tax Inspectorate for the City of Satka, Chelyabinsk Oblast
[address]

Plaintiff: OAO "Kombinat Magnezit"
[address]

CASSATIONAL COMPLAINT

On the Decision of the Arbitrazh Court for Chelyabinsk Oblast of May 26 1999 in the Case No. A76-3051/99/39-102 on the suit of OAO "Kombinat Magnezit" against the State Tax Inspectorate of the City of Satka

By a decision of the Arbitrazh Court of Chelyabinsk Oblast of 26 May 1999, the claims of the suit of OAO "Kombinat Magnezit" were satisfied in full and the decision of the State Tax Inspectorate [STI] of the City of Satka No. 75 was recognized as void.

We consider that in the issuance of the decision and decree the norms of substantive law were violated, and we therefore are unable to agree with it for the following reasons:

By the Law of the RF "On the Value Added Tax [VAT]" (taking account of the later amendments and additions) and the Instructions of the STI of the RF of 11/10/95 No. 39, "On the procedure for the calculation and payment of VAT" (taking account of the later amendments and additions) it is determined that "goods of own production and also those acquired, which are exported beyond the bounds of the member-states of the CIS, and work and services exported beyond the bounds of the member-states of the CIS, are freed from VAT, after documentary confirmation of the actual export of the goods (work, services).

The named instruction and the amendments in it, before coming into force, underwent mandatory registration with the Ministry of Justice of the RF for the purpose of confirmation of its consistency with the Constitution of the RF and other legislative acts.

The provisions contained in the above-stated points of the instructions do not amend or make additions to, but only determine the procedure for the realization of the legislative norms.

In the verification of the documents presented, in particular freight customs declarations, only the fact of the transit of the freight over the border of the Russian

Federation was reflected and the freight remained in the territory of the CIS countries, which contradicts the conditions of the above-stated instruction No. 39 [for release from VAT]. (Act of tax verification in place, pages 10, 13 and 20).

By the amendments and additions No. 4 to Instruction No. 39, it was established that along with other conditions determining the export regime for realization of goods, transport, customs or other documents with the notation of the border customs bodies of the member states of the CIS or of the customs bodies of the countries located beyond the bounds of the CIS, which confirm the export of goods coming from Russia beyond the bounds of the member states of the CIS, would serve as the basis for the receipt of the [tax] privilege.

It follows that the privileges in respect of the VAT, in accordance with the above-stated Law, are provided to economic subject only upon the export of the goods (work, services) into third countries, beyond the bounds of the member-states of the CIS.

We direct attention also to the fact that the Supreme Court of the RF in its decision of 23/09/97 No. GKPI 97-368, and of 07/08/97 No. GKPI 97-327, recognized the points of the instruction of the State Tax Service No. 39 of 11/10/95 restricting the group of export operations in which such export is recognized as realization beyond the bounds of the member countries of the CIS as being consistent with effective legislation. In accordance with point 3 of Article 10 of the Law of the RF "On the Value Added Tax," instructions on the application of the stated Law are to be elaborated and published by the State Tax Service of the RF in cooperation with the Ministry of Finances of the RF. The provisions of the Instructions are completely in agreement with the requirements of point 2 of Article 10 of the stated Law of the RF "On the VAT" and with the inter-governmental decision of the countries-participants of the CIS on the given question of 13/11/92.

The above-stated Law of the RF "On the VAT" and Instruction No. 39 regulate the provision of privileges on the basis of the export of goods beyond the bounds of the member-countries of the CIS (upon the presentation of the necessary documents, confirming the transit of the freight over the borders of the given country) and not according to the place of the factual location of the purchaser of the products; and in and of itself the location of a foreign firm in a third country does not give the right to the privilege on the exported goods, if the goods themselves stay within the territory of the member-countries of the CIS.

Thus, the argument of the court that the owner of the goods may dispose of the goods at his discretion is certainly correct, however, there is no basis for the provision of the [tax] privileges.

On the basis of that set forth, we consider that the decision of the STI on the application of sanctions for a violation of the law as a result of the improper application of the privileges No. 75 of March 23, 1999, in the part concerning the exaction of the VAT and of penalties and financial sanctions, is in accord with effective legislation and we request that the court of the first instance be reversed.

Head of the Inspection
Adviser of the Tax Service of the
First Rank [signature] V. P. Korochkin

Appendix O: Decree of a Circuit Arbitrazh Court (Cassational Instance)

FEDERAL ARBITRAZH COURT FOR THE URALS CIRCUIT

D E C R E E

Of the Cassational Instance for the Verification of the Basis and Legality of the Decisions of Arbitrazh Courts that have Entered into Legal Force

Ekaterinburg
7 August 1999 **Case No. F09-661/99AK**

The Federal Arbitrazh Court for the Urals Circuit for the verification in cassational instance of the legality of decisions and decrees of the arbitrazh courts of the subjects of the Russian Federation, taken by them in the first and second instances, in the composition of:

Presiding judge: N. L. Menshikova
Judges: G. V. Annenkova
Yu. V. Merzlyakov

Considered in a court session the cassational complaint of the State Tax Inspectorate for the City of Satka concerning the decision of the Arbitrazh Court for Chelyabinsk Oblast of 26/05/99 in Case No. A76-3051/99 concerning the suit of OAO "Kombinat Magnezit" against the State Tax Inspectorate for the city of Satka concerning the recognition of the decision as void in part.

In the court session the following representatives of the plaintiff participated:
A.V. Tokarev, power of attorney of 06/08/97 No. 18ur-81
N.I. Genyakova, power of attorney of 18/05/99 No.72/26ur-58
N.V. Tyurina, power of attorney of 10/12/97 no. 79/26-172.

The State Tax Inspectorate for the city of Satka was properly informed of the time and place of consideration of the cassational appeal, but its representative did not appear at the court session.

Their rights and duties were explained to the representatives of the plaintiff. No recusals of judges were petitioned. There were no motions.

The open joint stock society "Kombinat Magnezit" made recourse to the Arbitrazh Court for Chelyabinsk Oblast with a suit on the recognition as void of decision No. 75 of

23/03/99 of the State Tax Inspectorate for the city of Satka (STI) in the part concerning the exaction of tax arrears on VAT in the sum of 83,423,627 rubles, a fine in the amount of 16,684,725 rubles, and a penalty in the amount of 34,690,266 rubles.

By decision of the arbitrazh court, the claims of the suit were satisfied in full [names of judges at the first instance].

In the issuance of the court act, the arbitrazh court made reference to the Law of the RF "On the Value Added Tax", believing that the plaintiff based the impropriety of application to it of financial sanctions [on this Law], since, being occupied with the export of goods beyond the bounds of the Russian Federation, it has privileges in being released from the VAT.

The decision was not considered on appeal.

The STI for the city of Satka did not agree with the decision of the court and requests its reversal and refusal of the suit [of the plaintiff], considering that the plaintiff did not have the right to privileges in the VAT in relation to goods exported upon the instructions of a foreign firm to countries of the CIS.

Having verification the legality of the court act issued through the procedures of Articles 162, 171 and 174 of the APC RF upon the complaint of the tax body, the court of the cassational instance did not find bases for its reversal.

In accordance with subpoint "a" of point 1 of Article 5 of the Law of the RF "On the Value Added Tax", taking account of the decision of 23/09/97 No. GKPI 97-368 of the Supreme Court of the RF, goods, work and services exported beyond the bounds of the member-countries of the CIS are freed from VAT.

As follows from the act of verification of 30/12/98 of the tax body and the export contracts in the materials of the case, the enterprise shipped the products to the countries of the CIS (Ukraine, Kazakhstan, Uzbekistan and so forth) according to contracts concluded with foreign firms from Canada, America, and Denmark, by whose instructions the freight was sent to the recipient, that is, to a legal person located on the territory of the CIS countries. The tax body did not establish the existence of any contractual relations between OAO "Kombinat Magnezit" and the economic subjects of the CIS receiving the plaintiff's products.

In connection with that set forth, the arbitrazh court made the correct conclusion that in the sale of the products to firms of the "far abroad", but shipment of them to a third party located on the territory of the CIS, the enterprise had the right to use the privileges in relation to VAT, since in the given instance, the special rule in relation to the CIS under point 2 of Article 10 of the Law of the RF "On the Value Added Tax" does not apply.

The given conclusion does not contradict the decision of the Supreme Court of the RF of 23/09/97, explaining that "in relation to instances of the shipping of goods by instruction of the purchaser — a legal person of a member-state of the CIS, the question of privileges concerning taxation may be resolved in each concrete instance by the corresponding competent body or by the arbitrazh court."

The given conclusion was made by the court taking account of the content of point 2 of Article 10 of the Law of the RF "On the Value Added Tax", which established the particularities of export only in relation to economic subjects of the member-states of the CIS.

Thus, the arbitrazh court had a basis for the satisfaction of the claims of the suit and the application of subpoint "a" of point 1 of Article 5 of the above-stated Law.

In connection with that set forth, the decision of 26/05/99 of the Arbitrazh Court for Chelyabinsk Oblast is legal and is not subject to reversal.

Being guided by Articles 174, 175 and 177 of the Arbitrazh Procedure Code of the RF, the court

HAS DECREED:

The decision of 25/05/99 of the Arbitrazh Court of Chelyabinsk Oblast in Case No. A76-3051/99 is to be left without change, and the cassational complaint — without satisfaction.

Presiding Judge	[signature]	N.L. Menshikova
Judges	[signature]	G. V. Annenkova
	[signature]	Yu. V. Merzlyakov

Appendix P: Petition for Supervisory Protest

Letter head of Ryazan'chai

Date and number of letter

Chair of the Higher Arbitrazh Court
of the RF V. F. Yakovlev

Case No. 259/99

Petitioner (Respondent)
OAO "Ryazan'chai"
[address]

Plaintiff
GP "KF Pishchepromsir'yo"
[address]

PETITION

On the bringing of a protest and the suspension of execution of the decree of the Arbitrazh Court of Ryazan Oblast of 16/09/98 in Case No. 1-1496-98/C-9

By a decision of the Arbitrazh Court of Ryazan Oblast of 22/07/98, 551,529.96 rubles in underlying debt and 3,400,162.02 rubles in interest for the use of the money[1] were exacted from the respondent (OAO "Ryazan'chai") to the benefit of the plaintiff (GP KF Pishchepromsir'yo, under Article 395 of the Civil Code of the RF.

By a decree of the appellate instance of the same court of 16/09/98, the stated decision was changed, and specifically 551,529.96 rubles in underlying debt and 1,645,808.45 rubles in interest for the use of someone else's money was exacted to the benefit of the plaintiff under Article 395 of the Civil Code of the RF.

The cassational instance of the Federal Arbitrazh Court for the Central Circuit left the above-stated decree without change.

By a letter of 26/02/99 in Case No. 259/99, a Deputy Chair of the Higher Arbitrazh Court of the RF left without satisfaction the petition of OAO "Ryazan'chai" concerning the bringing of a protest.

By a letter of 28/06/99 in Case No. 259/99, the first Deputy Chair of the Higher Arbitrazh Court of the RF informed [the petitioner] of the absence of a basis for the bringing of a protest.

[1] Literally "interest for the use of someone else's money" — this is statutory interest applied where an obligation has not been met on time -Trans/Auth

I believe that the court instances did not fully examine circumstances having significance for the resolution of the case in its substance, which in its turn led to the issuance of court acts which are without basis and which violate the norms of substantive law.

On 21/04/93, a contract was concluded between the plaintiff and the respondent "On the provision of middleman services in the acquisition of imported raw tea", No. 6006-06/230-69. In accordance with the conditions of the contract (points 1, 3 and 6), GP "KF Pishchepromsir'yo" was obligated to provide to OAO "Ryazan'chai" middleman services in the acquisition of imported raw tea and to participate in the settlements between the foreign trade organizations and OAO "Ryazan'chai" concerning transport operations, for which the firm would take a mark-up in the amount of one percent of the value (issue price) of the product shipped, which would be stated in a copy of the demand for payment on account sent by post in a separate line.

On the basis of an account from VAO "Soyuzplodoimport" of 31/03/94 N. 20023, the plaintiff sent to the address of the respondent Tranzit a payment document of 11/04/94, No. 127, in the amount of 1,267,450.57 rubles. The value of the raw tea was 12,223,281.60 rubles. The mark-up (in accordance with point 6 of the Contract) was stated in the account on a separate line and consisted of 1% of the value of the raw tea, in the sum of 12,232.81 rubles.

In account No. 127, VAO "Soyuzplodoimport" is named as the shipper, there is a reference to the contract of 13/01/94 No. 6006/06-30-02 concluded between "Soyuzplodoimport" and "Pishchepromsir'yo" and to the account of VAO "Soyuzplodoimport" No. 20023.

It follows that the Plaintiff was not the owner of the goods (raw tea).

Taking into account the circumstances set forth, the contract of 21/04/93 No. 6006-06/230-69 is a contract of commission, the subject of which was the completion of trade-middleman operations for transport (Article 404 of the Civil Code of the RSFSR, Article 990 of the Civil Code of the RF).

The plaintiff, acting in the capacity of a principle, bears liability before the commissionaire (plaintiff) [agent] only for the payment to it of the commission payment (Article 415 of the Civil Code of the RSFSR, Article 991 of the Civil Code of the RF).

No evidence was provided by the plaintiff supporting the sum of the expenses incurred by it for the execution of the contract of commission and the period of delay in the payment of the sum of the commission payment, defined by point 6 of the contract as a mark-up in the amount of one percent of the value of the shipped product, and the interests on the stated sum.

In addition, the failure by the respondent to execute its monetary obligations is not due to its fault and the amount of interest requested by the plaintiff and recognized by the

court is clearly not proportional to the consequences of the delay in the execution of the monetary obligation.

Neither the court of the first instance nor the following instances investigated the question of the proper observance of the procedure for the payment for the product, nor concerning whether there was a change in this procedure.

By point 4 of the Contract of 21/04/93 No. 6006-06/230-69, the parties envisioned that the shipping of the product by the plaintiff to the respondent would take place only after 100% prepayment by the respondent. In fact, the plaintiff shipped the product without asking for payment and without confirmation from the respondent concerning the possibility of payment.

Thus, the plaintiff itself violated the conditions of the contract, the respondent is not at fault in the violation of the obligation to pay for the product and on the basis of Article 401 of the Civil Code of the RF, the respondent should not bear any civil-law liability, including in the form of interest.

In addition to this, the limitations period for filing the suit had passed when the plaintiff filed the suit, and the respondent petitioned concerning this in the court of the first instance. "Tranzit" presented its demand for payment No. 127 to the plaintiff on 11/04/94. The plaintiff made recourse to the court with its suit on 05/06/98, in violation of the three year limitations period (Articles 196 and 199 of the Civil Code of the RF).

On the basis of that set forth, we consider that the Decision and the Decrees of the court instances of the arbitrazh court are without basis and were adopted in violation of the norms of substantive law.

Being guided by Articles 180 and 182-185 APC RF, I request that the Chair of the Higher Arbitrazh Court of the RF:

1. Request from the Arbitrazh Court of Ryazan Oblast the materials of Case No. A54-1496-98/C-9;
2. Bring a protest in which the Presidium of the Higher Arbitrazh Court of the RF is requested to wholly reverse the decision of the Arbitrazh Court of Ryazan Oblast of 22/07/98 in Case No. A54-1496-98/C-9 and the decrees of the appellate and cassational instances and to refuse the suit of GP "KF Pishchepromsir'yo."
3. Suspend the execution of the Decree of the appellate instance of the Arbitrazh court of Ryazan Oblast of 16/09/98 until the completion of the supervision proceedings.

Director [of the enterprise "Ryazan'chai"] V.V. Nemchinov

Appendix Q: Decree on the Initiation of Execution Proceedings

DECREE No. 11559-62
On the Initiation of Execution Proceedings

__City of Ryazan__ "_16__" _October_ 199_8_

15 October 199_8_ there were received by the court bailiff-enforcer of _____railway,__city of Ryazan_____ region for enforcement _____three exec. Orders of the_ Arbitrazh Court of Ryazan Oblast of 16/09/1998, Nos. A54-1495/98-09, A54-1496/98-_ 09, and A54-1497/98-09 concerning the exaction of debt from AOOT "Ryazanchai" to__ the benefit of the state enterprise "Commercial Firm 'Pishchepromsiryo'" of 2,438,885.93 rubles_____
which correspond to the requirements for execution documents. Being guided by part 2 of Article 9 of the Federal law "On Execution Proceedings"

HAS DECREED:

To initiate execution proceedings _____concerning the exaction of debt from AOOT_ _____"Ryazanchai" of 2,438,885.93 _____
_____

It is proposed to the debtor to execute voluntarily within a five day period of the day of the initiation of the execution proceedings _____we propose the stated debt be paid to the judgement creditor or deposited in the account of the court bailiff's service No. 1_____
_____
_____

In the instance of failure to execute an execution document within the period established for voluntary execution of the stated document without sufficient reason, the court bailiff-enforcer shall issue a decree, according to which an execution fee shall be exacted from the debtor of 7% of the exacted amount or of the value of the property of the debtor. In the instance of failure to execute an execution document of a non-property nature, the execution fee shall be exacted from a debtor citizen in the amount of times the minimum wage, and from a debtor-organization of 50 times the minimum wage.

For purposes of providing for the execution I consider it necessary to conduct a listing of the property of the debtor and to impose arrest on it.

Copies of the decree are to be sent to ____ the parties at their addresses _____
_____
(judgement creditor, debtor, body issuing the execution document)

A decree on the initiation of execution proceedings may be appealed to the court within a 10 day period.

Court bailiff-enforcer __[signature]_____

Appendix R: Petition for Execution of Arbitral Award and Determination

S T R O I I N V E S T T S E N T R

ARBITRAZH COURT FOR MOSCOW OBLAST
[address]

via the Permanent Arbitration Tribunal at
[address]

Plaintiff: OOO NPP "Stroiinvesttsentr"
[address]

Respondent: ZAO "Izolator"
Vacation facility "Solovushka"
[address]

Value of the suit: 10,665,818 rubles

12.05.99 **CASE No. 45/99 a**

P E T I T I O N

On 29 April 1999, by a decision in Case No. 45/99a, the Permanent Arbitration Tribunal of the Association PLA obligated the ZAO "Izolyator" and vacation facility "Solovushka" to transfer 5,332,909 rubles in underlying debt and 3,999,681 rubles, 75 kopecks in penalty for late payment to OOO NPP "Stroiinvesttsentr" by the 6th of May 1999.

The respondent, however, did not execute the decision of the tribunal voluntarily.

In connection with that set forth we request You to issue an execution order for the mandatory execution of the decision of the Arbitration Tribunal of the Association PLA in Case No. 45/99a concerning the exaction of 5,332,909 rubles in debt and 3,999,681 rubles in penalty, and 75,000 rubles in compensation of expenses for the payment of the court fee and also 417 rubles and 45 kopecks as the state fee for the issuance of the execution order.

Attachments:

- information from the bookkeeper on the non-receipt of the funds;
- payment instruction on the payment of the state fee on 12/05/99.

General Director [signature] I.I. Ivanov

Arbitrazh Court for Moscow Oblast
[address]

D E T E R M I N A T I O N

"_15_" _06____ 199_9_ Case No. __A41-K1-7783/99__

The Arbitrazh Court for Moscow Oblast, in the composition of:

Presiding Judge: _____Judge D.I. Kolosova_____

Judges:_____

Considered in a court session the case concerning the suit of _____
(name of the plaintiff)

_____OOO NPP "Stroiinvesttsentr"_____

Against ___ZAO "Izolyator" vacation premises "Solovushka"_____
(name of respondent)

_____

concerning: __issuance of an execution order for a decision of an arbitration tribunal____

_____
with the participation in the session of
_____

_____

_____

has established:

OOO NPP "Stroiinvesttsentr" made recourse to the court with a petition o the issuance of an execution order for the mandatory exaction of 5,332,909 rubles in underlying debt, 3,999,681 rubles and 75 kopecks as a penalty for late payment, 75,000

rubles fee for the decision of the permanent arbitration tribunal of the “Professional Legal Assistance” Association of 29/04/99 in Case No. 45/99a.

By a decision of the arbitration tribunal, ZAO “Izolyator” vacation premises “Solovushka” was obligated to transfer to OOO NPP “Stroiinvesttsentr” the sum of a debt of 5,332,909 rubles, penalty of 3,999,681 rubles 75 kopecks, and expenses for payment of the fee for the arbitration tribunal, by 6 May 1999.

The respondent did not fulfill its obligation to pay the sum awarded and had not transferred the debt amount by 11 May 1999, that is, it did not voluntarily execute the award of the arbitration tribunal.

See reverse

[reverse of determination form]

Taking into account that the decision of the arbitration tribunal was issued in accordance with effective legislation, and with observance of the requirements of point 25 of the Temporary Statute on the Arbitration Tribunal for the Resolution of Economic Disputes, as amended on 16.11.97 [by] No. 144-FZ, the court considers it necessary to issue the execution order for the mandatory exaction. In addition, there shall be exacted from the respondent expenses for the state fee paid for the petition concerning the issuance of the execution order.

Being guided by point 25 of the Temporary Statute on the Arbitration Tribunal and Articles 140 and 198 of the APC RF, the court:

HAS DETERMINED:

To issue the execution order for the exaction from ZAO “Izolyator” vacation premises “Solovushka” to the benefit of OOO NPP “Stroiinvesttsentr” of 5,332,909 rubles in underlying debt, 3,999,681 rubles and 75 kopecks in penalty for late payment, 75,000 rubles in the arbitration fee and expenses for the state fee of 417.45 rubles, paid for the petition on the issuance of the execution order.

Judge [signature] D. I. Kolosova